

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:11-CR-124-FL-2
No. 7:13-CV-229-FL

DENNIS FREEMAN,)
)
Petitioner,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
)
Respondent.)

ORDER

This matter is before the court on the Memorandum and Recommendation (“M&R”) of United States Magistrate Judge Kimberly A. Swank, regarding the petitioner’s motion to vacate, set aside, or correct his sentence, under 28 U.S.C. § 2255 (DE 172), and the government’s motion to dismiss (DE 176). Also pending are petitioner’s motion for discovery (DE 180) and motion for status report or hearing (DE 184), filed in advance of the M&R. No objections to the M&R have been filed, and the time within which to make any objection has expired. In this posture the issues raised are ripe for ruling.

The court addresses, as an initial matter, petitioner’s motions for discovery and for hearing. Where “the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief,” 28 U.S.C. § 2255(b), the court finds that further discovery and hearing is not warranted, and thus petitioner’s motions for discovery and for hearing (DE 180, 184) are DENIED. Where the magistrate judge entered an M&R, petitioner’s motion for status report (DE 184) is DENIED AS MOOT.

The magistrate judge determined that petitioner’s claims of prosecutorial misconduct and ineffective assistance of counsel failed as a matter of law. Upon careful review of the M&R and of the record generally, having found no clear error, the court hereby ADOPTS the recommendation

of the magistrate judge as its own, and, for the reasons stated therein, the government's motion to dismiss is GRANTED, petitioner's § 2255 motion is DENIED, and this matter is DISMISSED. Under 28 U.S.C. § 2253(c), the court has reviewed the arguments raised, and, in light of the applicable standard, a certificate of appealability is DENIED. The clerk of court is directed to close the case.

SO ORDERED this the 4th day of November, 2015.



LOUISE W. FLANAGAN
United States District Judge